Agriculture Committee

Wednesday - March 22, 2006
1pm - 4pm
214 The Capitol

MEETING PACKET

Allan G. Bense
Speaker

Ralph Poppell
Dwight Stansel
Co-Chairs

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Agriculture Committee

Start Date and Time:	Wednesday, March 22, 2006 01:00 pm
End Date and Time:	Wednesday, March 22, 2006 04:00 pm
Location:	214 Capitol
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 511 On-line Dating Services by Ambler
HB 603 Gasoline Stations by Flores
HB 1015 Agricultural Economic Development by Pickens
HB 1031 Pawnbroking by Kyle
HB 1475 Agricultural Disaster Assistance by Grimsley

Consideration of the following proposed committee bill(s):

PCB AG 06-02 -- Department of Agriculture and Consumer Services

NOTICE FINALIZED on 03/20/2006 16:24 by SIMS-DAVIS.LINDA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 On-line Dating Services
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:** SB 1806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Reese AR	Reese AR
2) Judiciary Committee			
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill creates the "Florida Internet Dating Safety Act" to provide residents of the state with information relating to potential personal safety risks associated with on-line dating. The legislation provides that on-line dating providers offering services to Florida members shall provide to Florida members a "safety awareness notification" with a list of descriptive safety measures designed to increase awareness of safer dating practices.

The bill also provides that an on-line dating service must disclose to Florida members whether or not the service conducts criminal background checks on its members. If such screenings are conducted, the service must disclose to Florida members its policy relating to members identified as having a felony or sexual offense conviction and that the screenings do not cover records that are not public or records from foreign countries.

The bill establishes the Florida Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to this act from consumers, residents, and victims.

Civil remedies are provided for persons accessing an on-line dating service not in compliance, and civil penalties are provided against the owners of a non-compliant on-line dating service. Exclusions from the act's requirements are provided for Internet access intermediaries and Internet access service providers.

The bill does not appear to have a fiscal impact on state or local government. The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and safeguard individual liberty – The bill creates government regulation over a currently unregulated business.

Promote personal responsibility – The bill may increase personal responsibility for past unlawful behavior and may increase awareness of potential risks to personal safety.

B. EFFECT OF PROPOSED CHANGES:

Present situation: On-line dating services provide an opportunity for persons using the internet to advertise themselves as available for dating, and to search for others similarly available. There are thousands of on-line dating services, including large generalized services and smaller specialized services. The two largest services claim to have approximately 13 million subscribers each. Smaller specialized versions often cater to particular ethnic and religious groups, or offer specialized services. On-line dating services are currently unregulated by the state.

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The act provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[1] Remedies for acts prohibited by FDUTPA may include an action to enjoin a person from committing such acts[2] as well as the imposition of a civil penalty of not more than $10,000.[3] Actions may be brought by a state attorney or the Department of Legal Affairs[4] or by a consumer.[5]

Additionally, FDUPTA permits any person who has been aggrieved by a violation under FDUPTA to obtain a declaratory judgment and to enjoin a person who has or is violating FDUPTA.[6] Additionally, a person who has suffered a loss as a result of such violation may be able to recover actual damages, attorney's fees, and costs.[7]

Effect of proposed changes: The bill creates the "Florida Internet Dating Safety Awareness Act" and makes the following legislative findings:

- Residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating.
- Requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of on-line dating services fulfills a compelling state interest to increase public awareness of possible risks associated with Internet dating activities.
- The act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

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[1] Section 501.204, F.S.
[2] Section 501.207(1)(b), F.S.
[3] Section 501.2075, F.S. Violations against a senior citizen or handicapped person may result in a penalty of not more than $15,000 (s. 501.2077, F.S.).
[4] Section 501.207, F.S.
[5] *Id.*
[6] Section 501.211(1), F.S.
[7] Section 501.211(2), F.S.

The bill provides the following definitions:

- **Communicate or communicating** means free-form text authored by a member or real-time voice communication through an on-line dating service provider.
- **Criminal background screening** means a search for a person's felony and sexual offense convictions by one of the following means:
    - By searching available and regularly updated government public record databases for felony and sexual offense convictions so long as such databases, in the aggregate, provide substantially national coverage; or
    - By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.
- **Department** means the Department of Agriculture and Consumer Services
- **Florida member** means a member, as defined in subsection (5), who provides a Florida billing address or zip code when registering with the provider.
- **Member** means a person who submits to an on-line dating service provider the information required by the provider to access the provider's service for the purpose of engaging in dating, participating in compatibility evaluations with other persons, or obtaining matrimonial matching services.
- **On-line dating service provider or provider** means a person engaged in the business of offering or providing to its members for a fee access to dating, compatibility evaluations between persons, or matrimonial matching services through the Internet.
- **Sexual offense conviction** means a conviction for an offense that would qualify the offender for registration as a sexual offender pursuant to Florida law (s. 943.0435, F.S.) or under another jurisdiction's equivalent statute.

Provider safety awareness disclosures

An on-line dating service provider offering services to Florida members must disclose:

- A safety awareness notification that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider.
- Whether or not the website conducts criminal background screenings. Such disclosure must be in bold, capital letters in at least 12-point type.

If the on-line dating service provider conducts criminal background checks, and the provider's policy allows a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member, the provider must advise that such background screenings are not foolproof nor are they intended to give members a false sense of security. The provider must also disclose that not all criminal records are public in all states, not all databases are current, and that only publicly available felony and sexual offense convictions are included in the screening. Also, screenings do not cover other convictions or arrests or convictions from foreign countries.

Clearinghouse

The bill provides that the Department of Agriculture and Consumer Services shall serve as the clearinghouse for intake of all information from consumers, residents, and victims concerning the act. The consumer hotline may be used for intake of information, which may be directed to the appropriate enforcement authority, as determined by the department.

Civil Penalties

This bill includes a legislative finding that the act of transmitting files over the internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

The failure of an on-line dating service provider to comply with the disclosure requirements of this bill is a deceptive and unfair trade practice under Part II of ch. 501, F.S., which part is known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Each failure to provide a required disclosure constitutes a separate violation.

Under FDUTPA, the state[8] may seek declaratory and injunctive relief against a violator. The state may also seek a civil penalty of up to $10,000 for a willful violation, plus attorney's fees. The Attorney General may issue a cease and desist order to anyone violating FDUTPA. An individual may bring an action for injunctive relief, actual damages, and attorney's fees.

In addition to the FDUTPA remedy, this bill provides that a court may impose a civil penalty of up to $1,000 per violation, with an aggregate total not to exceed $25,000 for any 24-hour period, against any on-line dating service provider who violates any requirement of this act. Suit may be brought by either the Department of Legal Affairs or by the Division of Consumer Services of the Department of Agriculture and Consumer Services. Penalties collected accrue to the enforcing agency to "further consumer enforcement efforts."

Exceptions to Regulation

This bill provides: "An internet service provider does not violate this act solely as a result of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider." Primarily, this protects internet service providers from being deemed an on-line dating service company simply because they are transmitting e-mail and instant messages between persons.

Another exception is provided for internet web access services, which are not considered an on-line dating service provider simply for renting storage space and bandwidth.

C. SECTION DIRECTORY:

Section 1. Creates s. 501.165, F.S., creating a short title and stating legislative intent.

Section 2. Creates. s. 501.166, F.S., providing definitions applicable to regulation of online dating service providers.

Section 3. Creates s. 501.167, F.S., requiring certain disclosures by on-line dating service providers.

Section 4. Creates s. 501.168, F.S., naming the Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to the act.

Section 5. Creates s. 501.169, F.S., creating civil penalties for failure of an on-line dating service provider to comply with the act.

Section 6. Creates s. 501.171, F.S. to provide exclusions.

[8] Section 501.203(2), F.S., provides that the state attorney for the judicial circuit in which the violation occurred is the primary enforcing authority. If the violation occurs in more than one judicial circuit, if the state attorney defers, or if the state attorney does not act on a complaint within 90 days, the Attorney General is the enforcing authority.

Section 7. Provides direction to the Division of Statutory Revision.

Section 8. Creates a severability clause.

Section 9. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears as if it may have a fiscal impact on thousands of website owners, who will be required to reprogram their websites in order to comply with the bill's requirements, or cease offering services to Florida residents. Website operators who elect to change their operation because of this bill may also incur the cost of ordering and analyzing criminal history background checks.

This bill may increase the cost to Florida residents who utilize on-line dating services should more providers start requiring criminal history background checks.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:[9]

There have been many attempts by federal and state governments to regulate the internet. Many have been found unconstitutional. Constitutional concerns may be raised by the bill related to the Commerce Clause, the First Amendment, and Due Process. The First Amendment issue applies regardless of where the website operator resides. The Commerce Clause and Due Process issues apply only to websites operated outside of the state. Staff is unaware of any major on-line dating service provider headquartered in Florida.[10]

Commerce Clause

The United States Supreme Court describes the Commerce Clause as follows:

> The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.

Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (internal citations omitted).

The Commerce Clause allows Congress to regulate commerce between the states. Congress has stated that "it is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. 230(b). It could be argued that this clause states a congressional intent that the states may not regulate the internet.

Dormant commerce clause analysis is a part of Commerce Clause analysis. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.[11]

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se," *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001), while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir.2003) (citations omitted).

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[9] The following constitutional discussion is republished from the 2005 analysis of HB 1035 w/CS.

[10] Two of the three largest on-line dating services are located in California; the third is located in Texas.

[11] The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989). Because the internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate internet activities without "project[ing] its legislation into other States." *Id.* at 334. "We think it likely that the internet will soon be seen as falling within the class of subjects that are protected from State regulation because they 'imperatively demand[ ] a single uniform rule.'" *American Booksellers Foundation v. Dean*, 342 F.3d 96, 104 (2nd Cir. 2003). See also, *ACLU v. Johnson*, 194 F.3d 1149, 1162 (10th Cir. 1999); and *American Libraries Association v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997)(all three cases striking a state law regulating internet commerce as a violation of the dormant commerce clause).

In *American Libraries Ass'n v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997). the court enjoined New York from enforcing a statute which prevented communications with minors over the Internet "which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors." *Pataki*, 969 F.Supp. at 163. The court found that the statute violated the Commerce Clause for three reasons:

> First, the practical impact of the New York Act results in the extraterritorial application of New York law to transactions involving citizens of other states and is therefore per se violative of the Commerce Clause. Second, the benefits derived from the Act are inconsequential in relation to the severe burdens it imposes on interstate commerce. Finally, the unique nature of cyberspace necessitates uniform national treatment and bars the states from enacting inconsistent regulatory schemes.

Pataki, 969 F.Supp. at 183-184.

The bill provides that it only applies to web pages viewed by persons in Florida. Case law has said that "it remains difficult for 'publishers' who post information on the internet to limit website access to . . . viewers from certain states." *American Booksellers v. Dean,* 342 F.3d 96, 99 (2nd Cir. 2003). However, users of online dating service providers are required to give their location, and have incentive to do so because of the local nature of dating.

Neither the United States Supreme Court nor the11th Circuit has addressed the impact of the Commerce Clause on state regulation of the Internet. No federal case was found in any of the other circuits other than cases striking a state law that purported to regulate the internet.[12] However, most of those other laws were laws criminalizing internet conduct. There are no criminal sanctions in this bill, and it is likely that the level of review for civil sanctions is lower than the level of review for criminal laws. This bill undoubtedly imposes some burden on interstate commerce; the key question for Commerce Clause analysis is whether such burden is "unreasonable."

First Amendment

This bill requires that an internet provider give one or more specific messages to all persons who access the website, and provides civil penalties for the failure to provide that message.

The First Amendment right to free speech applies to commercial speech. *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). In later decisions, the Supreme Court gradually articulated a test based on the "commonsense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. *Central Hudson Gas & Electric Corp. v. Public Service Commission of*

[12] Staff did not review any of the "wine cases" in this regard. The wine cases discuss whether the commerce clause allows a state to prohibit wine shipments from out of state. The constitutional issue in those cases is which part of the Constitution applies: the Commerce Clause, which clearly prohibits such laws, or the 21st Amendment (repealing prohibition), which clearly provides that the states may regulate the sale and consumption of alcohol within their borders.

N.Y., 447 U.S. 557 (1980). *Central Hudson* identified several factors that courts should consider in determining whether a regulation of commercial speech survives First Amendment scrutiny:

> For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

447 U.S., at 566. In *Edenfeld v. Fane*, 507 U.S. 761 (1993), the Supreme Court explained that the Government carries the burden of showing that a challenged regulation directly advances the governmental interest asserted in a direct and material way. That burden "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Id.*, at 770-771. The Court cautions that this requirement is critical; otherwise, "a State could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression." *Id.*, at 771. *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995)(prohibiting certain government regulation of beer labeling despite a government argument that such restrictions were necessary for health, safety and welfare).

A state cannot compel a person to distribute a particular statement that the person disagrees with. Florida law used to require that a newspaper that published an editorial critical of a candidate for political office was required to provide the politician with space to make a reply. This right of reply law was found unconstitutional in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). In *Pacific Gas and Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986), the United States Supreme Court ruled that California cannot compel a utility company to give its excess space in billing envelopes to other entities. "Compelled access like that ordered in this case [by the utilities commission] both penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set." *Id.* at 9.[13] It is possible that a court may find that the statements required by this bill rise to the level of compelled speech.

Jurisdiction Over Non-Residents

The due process clause of the state and federal constitutions require the courts to provide due process to all litigants in any court case. One part of the concept of due process is the requirement that a court not act unless the court has legal jurisdiction over a party to the litigation. It is a violation of due process for a court to enter a judgment affecting a person unless the court has jurisdiction over that person.

Whether the State of Florida can exercise civil jurisdiction over a website operator in a foreign country is a matter of treaty. It is possible that the State, or a citizen of the state, may be able to prosecute a civil cause of action against a website operator located in a foreign country who is violating the provisions of this bill.

It is likely that the state can impose civil court jurisdiction over a citizen of another state who violates the provisions of this bill. The leading case on civil jurisdiction over internet commerce is *Zippo Mfg. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa. 1997). Zippo makes a distinction between a passive website, one that just provides information, versus an active website that actively takes orders and allows the operator to enter into contracts with citizens of the state. The Zippo rule is that the operator of a passive website is not subject to personal jurisdiction in any state where someone

[13] This bill assumes that all operators of an online dating service would want to encourage their members to conduct a background check before meeting a prospective date. An operator that wanted to take a contrary view, perhaps to say that such a search is not warranted, would have difficulty taking that position because this bill requires disclosures that contradict this view.

may happen to view the website. On the other hand, the operator of an active website that accepts sales orders from the resident of a state should anticipate having to defend a civil lawsuit in that state.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to on-line dating services; creating ss. 501.165-501.171, F.S., the "Florida Internet Dating Safety Awareness Act"; providing legislative findings; defining terms; requiring certain disclosures by on-line dating services; providing a clearinghouse for consumers; providing civil penalties; providing exclusions; providing a directive to the Division of Statutory Revision; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.165, Florida Statutes, is created to read:

501.165 Florida Internet Dating Safety Awareness Act; legislative findings.--

(1) Sections 501.165-501.171 may be cited as the "Florida Internet Dating Safety Awareness Act."

(2)(a) The Legislature has received public testimony that criminals and sex offenders use on-line dating services to prey upon the citizens of this state.

(b) The Legislature finds that residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating. Also, requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of an on-line dating service fulfills a compelling state

interest to increase public awareness of the possible risks associated with Internet dating activities.

(c) The Legislature finds that the act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

Section 2. Section 501.166, Florida Statutes, is created to read:

501.166 Definitions.--As used in ss. 501.165-501.171:

(1) "Communicate" or "communicating" means free-form text authored by a member or real-time voice communication through an on-line dating service provider.

(2) "Criminal background screening" means a search for a person's felony and sexual offense convictions initiated by an on-line dating service provider and conducted by one of the following means:

(a) By searching available and regularly updated government public record databases for felony and sexual offense convictions so long as such databases, in the aggregate, provide substantial national coverage; or

(b) By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.

(3) "Department" means the Department of Agriculture and Consumer Services.

(4) "Florida member" means a member as defined in subsection (5) who provides a Florida billing address or zip code when registering with the provider.

(5) "Member" means a person who submits to an on-line dating service provider the information required by the provider to access the provider's service for the purpose of engaging in dating and participating in compatibility evaluations with other persons or obtaining matrimonial matching services.

(6) "On-line dating service provider" or "provider" means a person engaged in the business of offering or providing to its members access to dating and compatibility evaluations between persons or matrimonial matching services through the Internet.

(7) "Sexual offense conviction" means a conviction for an offense that would qualify the offender for registration as a sexual offender pursuant to s. 943.0435 or under another jurisdiction's equivalent statute.

Section 3. Section 501.167, Florida Statutes, is created to read:

501.167 Provider safety awareness disclosures.--An on-line dating service provider offering services to Florida members shall:

(1) Provide a safety awareness notification with, at a minimum, information that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider. Examples of such notifications include:

(a) "Anyone who is able to commit identity theft can also falsify a dating profile."

(b) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you."

(c) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your on-line profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."

(d) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place at a time with many people around."

(2) If an on-line dating service provider does not conduct criminal background screenings on its members, the provider shall disclose, clearly and conspicuously, to all Florida members that the on-line dating service provider does not conduct criminal background screenings. The disclosure shall be provided when an electronic mail message is sent or received by a Florida member, on the profile describing a member to a Florida member, and on the provider's website pages used when a Florida member signs up. A disclosure under this subsection shall be in bold, capital letters in at least 12-point type.

(3) If an on-line dating service provider conducts criminal background screenings on all of its communicating

members, then the provider shall disclose, clearly and conspicuously, to all Florida members that the on-line dating service provider conducts a criminal background screening on each member prior to permitting a Florida member to communicate with another member. The disclosure shall be provided on the provider's website pages used when a Florida member signs up. A disclosure under this subsection shall be in bold, capital letters in at least 12-point type.

(4) If an on-line dating service provider conducts criminal background screenings, then the provider shall disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member; that background screenings for felony and sexual offense convictions are not foolproof, are not intended to give members a false sense of security, are not a perfect safety solution and criminals may circumvent even the most sophisticated search technology; that not all criminal records are public in all states and not all databases are up to date; that only publicly available felony and sexual offense convictions are included in the screening; and that screenings do not cover other types of convictions or arrests or any convictions from foreign countries.

Section 4. Section 501.168, Florida Statutes, is created to read:

501.168 Clearinghouse.--The department shall serve as the clearinghouse for intake of information concerning ss. 501.165-501.171, the Florida Internet Dating Safety Awareness Act, from

consumers, residents, and victims. The consumer hotline may be used for this purpose. Information obtained shall be directed to the appropriate enforcement entity, as determined by the department.

Section 5. Section 501.169, Florida Statutes, is created to read:

501.169 Civil penalties.--

(1) An on-line dating service provider that registers Florida members must comply with the provisions of ss. 501.165-501.171.

(2) Failure to comply with the disclosure requirements of ss. 501.165-501.171 shall constitute a deceptive and unfair trade practice under part II. Each failure to provide a required disclosure constitutes a separate violation.

(3) In addition to the remedy provided in subsection (2), the court may impose a civil penalty of up to $1,000 per violation, with an aggregate total not to exceed $25,000 for any 24-hour period, against any on-line dating service provider that violates any requirement of ss. 501.165-501.171. Suit may be brought by an enforcing authority, as defined in s. 501.203. Any penalties collected shall accrue to the enforcing authority or the department's Division of Consumer Services to further consumer enforcement efforts.

Section 6. Section 501.171, Florida Statutes, is created to read:

501.171 Exclusions.--

(1) An Internet access service or other Internet service provider does not violate ss. 501.165-501.171 solely as a result

of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider.

(2) An Internet access service or other Internet service provider shall not be considered an on-line dating service provider within the meaning of ss. 501.165-501.171 as to any on-line dating service website provided by another person or entity.

Section 7. The Division of Statutory Revision is directed to include the provisions of sections 501.165-501.171, Florida Statutes, in part I of chapter 501, Florida Statutes.

Section 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 511**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: **Agriculture**

Representative **Ambler** offered the following:

Amendment

Remove lines 121-135 and insert:

(4) If an on-line dating service provider conducts criminal background screenings, the provider shall disclose that background screenings of applicants are not perfect and that there is no way to guarantee that the name provided by a person to be run through a background screening is in fact the person's true identity. Additionally, not all criminal records are publicly available. Therefore the screenings may not identify every member who has a felony or sexual offense conviction and users should participate in the service at their own risk and use caution when communicating with other members. Additionally, the provider shall disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 603 Gasoline Stations
SPONSOR(S): Flores
TIED BILLS: **IDEN./SIM. BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Kaiser	Reese
2) Domestic Security Committee			
3) Governmental Operations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

HB 603 requires all motor fuel retail outlets to be equipped with an alternative means of power generation on site for use during a primary power outage. The bill requires the alternative means of power to be maintained and kept fully operational at all times.

Motor fuel retail outlets with a certificate of occupancy issued on or after June 1, 2006 must be in compliance with HB 603 at the point of issuance of the certificate of occupancy. Motor fuel outlets that obtained a certificate of occupancy before June 1, 2006, have until December 1, 2007 to come into compliance.

The bill provides penalties for violation of the act. The effective date of this legislation is June 1, 2006. The bill does not appear to fiscally impact state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires all gasoline stations to be equipped with a backup power system or other alternative pumping system.

Maintain public security: The bill provides a means for consumers to access fuel after disaster related events.

B. EFFECT OF PROPOSED CHANGES:

In light of the active hurricane seasons Florida suffered over the past few years, it became apparent that certain holes existed in emergency preparedness plans in the state. While many motor fuel retail outlets had fuel in their storage tanks during widespread power outages, they lacked the power to pump the fuel. This situation created numerous difficulties.

HB 603 requires all motor fuel retail outlets to be equipped with an alternative means of power generation on site for use during a primary power outage. The bill requires the alternative means of power to be maintained and kept fully operational at all times.

Motor fuel retail outlets with a certificate of occupancy issued on or after June 1, 2006 must be in compliance with HB 603 at the point of issuance of the certificate of occupancy. Motor fuel outlets that obtained a certificate of occupancy before June 1, 2006, have until December 1, 2007 to come into compliance.

The bill provides that a violation of HB 603 is a misdemeanor of the second degree, punishable by imprisonment not to exceed 60 days or a fine not exceed $500.[1]

C. SECTION DIRECTORY:

Section 1: Creates the "Consumer Emergency Gasoline Act"; requiring retail gasoline stations to be equipped with alternative power sources to be used in case of power outage; providing a period of compliance; and, providing a penalty.

Section 2: Provides an effective date of June 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

[1] Sections 775.082 or 775.083, F.S.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Agriculture and Consumer Services (department) states the total fiscal impact on the private sector is unknown. However, the department estimates the cost of the modification for each facility, required by this legislation, would range from $2,200 to $20,000. The current number of facilities in Florida which dispense gasoline is 9,226. If all of these facilities were required to comply with the requirements of the bill, the department estimates the total cost could range from $20,297,200 to $184,520,000. (Please see the Fiscal Comments section for an explanation of these amounts.)

D. FISCAL COMMENTS:

There are many variables which must be taken into account when determining the cost of the generator and installation. The department states that the estimate range is very uncertain and would require significant additional studies to refine. Factors to consider include:

- How many pumps are present (the pump located in the tank).
- The type of each pump.
- The amperage of each pump.
- How many devices are present (a device is the above-ground mechanism used for fueling).
- The type of each device.
- The amperage of each device.
- What the generator will be required to power (i.e. pumps, devices, cash register, lights, etc.).
- Generator features (gas, diesel, liquefied petroleum gas, or natural gas).
- Maintenance costs (not included in Section C., Direct Economic Impact on Private Sector).

There are currently 9,226 gas stations in Florida. Gas stations may have as few as three to six devices to as many as 90 devices (including diesel truck fueling). According to the department, which consulted with local contractors, a small generator, suitable for powering a couple of devices and pumps, will cost approximately $2,200 to $4,200 installed. A large generator, suitable for powering all pumps and devices at a large gas station will cost approximately $15,000 to $20,000 installed.

The estimated range of total cost for implementation of this legislation quoted in Section C., Direct Economic Impact on Private Sector, was derived using the following calculations:

- 9,226 gas stations x $2,200/generator = $20,297,200 (low end of estimated range)
- 9,226 gas stations x $20,000/generator = $184,520,000 (high end of estimated range)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

NA

A bill to be entitled

An act relating to gasoline stations; creating the "Consumer Emergency Gasoline Act"; requiring that retail gasoline stations be equipped with an alternative means of power generation so that the station's fuel pumps may be operated in the event of a power outage; providing a period for existing retail gasoline stations to comply with the act; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Consumer Emergency Gasoline Act.--

(1) Any gasoline station that offers motor fuel for sale at retail to the public must be equipped with an alternative means of power generation on site so that the station's fuel pumps may be operated in the event of a power outage. The alternative means of power generation must be maintained and kept fully operational at all times and the gasoline station must be capable of pumping motor fuel immediately following a loss of power.

(2) Subsection (1) applies to any newly constructed gasoline station for which a certificate of occupancy is issued on or after June 1, 2006. A gasoline station that obtained a certificate of occupancy before June 1, 2006, has until December 1, 2007, to comply with the requirements of subsection (1).

(3) A violation of subsection (1) is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083.

Section 2. This act shall take effect June 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 603**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: **Agriculture**

Representatives **Flores and Domino** offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 526.143, Florida Statutes, is created to read:

526.143 Alternate means of power generation for motor fuel dispensing facilities.--

(1) No later than December 31, 2006, each motor fuel terminal facility, as defined in s. 526.303(16), and wholesaler, as defined in s. 526.303(17), that sells motor fuel in this state must be capable of operating its distribution loading racks using an alternate power source for a minimum of 72 hours. Pending a postdisaster examination of the equipment by the operator to determine any extenuating damage that would render it inoperable or unsafe to use, the facility must have such alternate power source available for operation no later than 36 hours after a major disaster, as defined in s. 252.34. Initial inspection for proper installation and operation shall be completed by a local building inspector, and verification of the inspection must be submitted to the local county emergency

management agency. Inspectors from the Department of Agriculture and Consumer Services shall perform a periodic visual inspection of the alternate power source to ensure that the emergency auxiliary electrical equipment is installed. Each facility shall perform annual inspections to ensure that the emergency auxiliary electrical generators are in good working order and show proof of those inspections in order to be deemed in compliance with and to participate in the fuel supplier program.

(2) Each newly constructed or substantially renovated motor fuel retail outlet, as defined in s. 526.303(14), for which a certificate of occupancy is issued on or after July 1, 2006, must be prewired with an appropriate transfer switch and be capable of operating all fuel pumps, dispensing equipment, life-safety systems, and payment acceptance equipment using an alternate power source. As used in this subsection, the term "substantially renovated" means a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet. Local building inspectors shall include an equipment and operations check for compliance with this subsection in the normal inspection process before issuing a certificate of occupancy. A copy of the certificate of occupancy shall be provided to the county emergency management agency upon issuance of such certificate. Each facility shall perform periodic inspections to ensure that the installed transfer switch and emergency auxiliary electrical generators are in good working order and provide proof of those inspections to the county emergency management agency in order to be in compliance with and to participate in the Florida Disaster Motor Fuel Supplier Program under s. 526.144.

(3)(a) No later than December 31, 2006, each motor fuel retail outlet described in subparagraph 1. or subparagraph 2.

must be prewired with an appropriate transfer switch and be capable of operating all fuel pumps, dispensing equipment, life-safety systems, and payment-acceptance equipment using an alternate power source:

1. A motor fuel retail outlet which has 16 or more fueling positions, or

2. The owner of any motor fuel retail outlet that had a minimum monthly average motor fuel sales volume of 125,000 gallons for any 6-month period during calendar year 2005.

(b) Each corporation that owns or operates more than 10 motor fuel retail outlets within a single county shall maintain at least one portable generator, for every 10 retail outlets, that is capable of providing an alternate generated power source as required under paragraph (2).

(c) Installation of the wiring and transfer switch shall be performed by a certified electrical contractor. Each retail outlet subject to this subsection must keep a copy of the documentation of such installation on site or at its corporate headquarters. In addition, each retail outlet must keep a written record that confirms the periodic testing and ensured operational capacity of the equipment. The required documents must be made available upon request to the Division of Emergency Management and the county emergency management agency.

(4)(a) Subsections (2) and (3) apply to any self-service, full-service, or combination self-service and full-service motor fuel outlet regardless of whether the business is located on the grounds of, or is owned by, another retail business establishment that does not engage in the business of selling motor fuel.

(b) Subsections (2) and (3) do not apply to:

1. An automobile dealer;

2. A person who operates a fleet of motor vehicles; or

3. A person who sells motor fuel exclusively to a fleet of motor vehicles.

(5) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

(6) Notwithstanding any other law or local ordinance, to ensure an appropriate emergency management response to major disasters in the state, the regulation of and requirements for the siting and placement of an alternate power source and any related equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets shall be exclusively controlled by the state.

Section 2. Paragraph (i) of subsection (2) of section 252.35, Florida Statutes, is amended, paragraphs (j) through (v) are renumbered as paragraphs (k) through (w), respectively, and a new paragraph (j) is added to that subsection, to read:

252.35 Emergency management powers; Division of Emergency Management.--

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties under ss. 252.31-252.90, the division shall:

(i) Institute statewide public awareness programs. This shall include an intensive public educational campaign on emergency preparedness issues, including, but not limited to, the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public educational campaign shall include relevant

information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters. All educational materials must be available in alternative formats and mediums to ensure that they are available to persons with disabilities.

(j) The Division of Emergency Management and the Department of Education shall coordinate with the Agency For Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

Section 3. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

creating s. 526.143, F.S.; providing that each motor fuel terminal facility and wholesaler that sells motor fuel in the state must be capable of operating its distribution loading racks using an alternate power source for a specified period by a certain date; providing requirements with respect to the operation of such equipment following a major disaster; providing requirements with respect to inspection of such equipment; requiring newly constructed or substantially renovated motor fuel retail outlets to be capable of operation using an alternate power source; defining "substantially renovated"; requiring certain motor fuel retail outlets to have a generator; providing inspection requirements; requiring certain motor fuel retail outlets to be capable of operation using an alternate power source by a specified date; requiring

certain motor fuel retail outlet owners to have a generator on hand; providing inspection and recordkeeping requirements; providing applicability; providing severability; providing for preemption to the state of the regulation of and requirements for siting and placement of an alternate power source and any related equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets; amending s. 252.35, F.S.; expanding the duty of the Division of Emergency Management to conduct a public educational campaign on emergency preparedness issues; providing an additional duty of the division with respect to educational outreach concerning disaster preparedness; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1015 Agricultural Economic Development
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Kaiser	Reese
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1015 reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

The bill establishes "agricultural enclave" designations and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill stipulates the property must meet Greenbelt criteria, have been in agricultural production for the past five years and meet additional criteria. The bill exempts the CPA from certain rules of the Department of Community Affairs (DCA) relating to urban sprawl. For enclaves not exceeding 640 acres, the bill requires local governments to make a determination regarding transmittal of a CPA within 120 days of receipt and transmit the CPA to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA.

Relating to enclave designations of 641 to 2,560 acres, the bill provides for good faith negotiations between the local government and landowner, with certain criteria to be met regarding the negotiations. Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA. If the landowner fails to negotiate in good faith, all DCA rules relating to urban sprawl apply to the CPA. The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. The bill requires the purchasing agency to allow the lease to remain in full force for the remainder of the lease term. Where consistent with the purposes for which the property was acquired, the purchasing agency must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of the purchase.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. Furthermore, the bill requires water management districts to notify agricultural applicants for consumptive use permits of the right to apply for permits valid for 20 years.

By July 1, 2007, the bill requires each water management district to enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in law.

The bill does not appear to have a fiscal impact requiring new state expenditures. The effective date of this legislation is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill creates a process for owners of agricultural enclaves to request comprehensive plan amendments allowing land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. Additionally, the bill reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act

Currently, s. 70.001, F.S., sets forth the Bert Harris Act, which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property. A 180-day time period is required between filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density. The bill reduces the time period from 180 days to 90 days.

Agricultural Enclaves

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (act)[1] establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a plan, capital improvements, and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The act contains a special designation and specific provisions relating to an urban infill and redevelopment area. However, there is neither a designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

The bill establishes "agricultural enclave" designations and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The property must meet Greenbelt criteria and have been in agricultural production for the past five years. An agricultural enclave is defined as an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity'
- Has been in continuous use for bona fide agricultural purposes, as defined by statute[2] for a period of 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its perimeter by:
  - Property that has existing industrial, commercial, or residential development; or
  - Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;
- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided as part of a financially

[1] ss. 163.3161-163.3244, F.S.

[2] s. 193.461, F.S.

feasible 5-year schedule of capital improvements that is adopted by the local government or by a alternative provider of local government infrastructure; and

- Satisfies one of the following acreage criteria:
  - The parcel may not exceed 640 acres; or
  - The parcel may not exceed 2,560 acres.

In regards to agricultural enclaves not exceeding 640 acres, the bill exempts the CPA from certain rules[3] of the Department of Community Affairs (DCA) relating to urban sprawl. The bill requires local governments to make a determination regarding transmittal of a CPA within 120 days of receipt and transmit the CPA to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using rules relating to urban sprawl as a factor in determining compliance of a CPA.[4]

Relating to enclave designations of 641 to 2,560 acres, the bill provides for good faith negotiations between the local government and landowner. The negotiation period is set for 180 days following the date the local government receives a complete application for a CPA. The bill requires, within 30 days of receipt by the local government of the application, for the local government and landowner to agree, in writing, to a schedule for information submittal, public hearings, negotiations, and final action on the CPA. This schedule may only be changed with the written consent of the local government and the landowner. Compliance with the schedule in written agreement constitutes good faith negotiations.

Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules of the relating to urban sprawl as a factor in determining compliance of a CPA.[5] If the landowner fails to negotiate in good faith, all rules of the DCA relating to urban sprawl apply to the CPA.

The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

Land Acquisition

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation," and contains Florida's nationally recognized land acquisition programs:

- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands and to conserve and protect environmentally unique and irreplaceable lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever program. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sales of bonds. Each year for 10 years, the majority of $300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the

[3] Rule 9J-5.006(5), Florida Administrative Code
[4] *Id.*
[5] *Id.*

Department of Agriculture and Consumer Services (DACS) received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than $3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agricultural lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

The bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning
In the mid-1990's, when it became apparent that chief groundwater sources may not be sufficient to sustain Florida's population, the five water management districts were charged with developing regional water supply plans. Florida law [6] requires the plan to be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately-owned water utilities, multijurisdictional water supply entities, self-suppliers, and other affected and interested parties.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

Consumptive Use Permits
Water use permits can be issued to non-government individuals or entities for a period of up to 20 years, but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20 years.

Memorandum of Agreement for Agricultural Related Exemption
Section 373.406(2), F.S., provides an exemption to persons engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. The law further states such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

The bill establishes a process by which each water management district enters into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemption set forth in s. 373.406(2), F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S.; amending notice period for filing action.

[6] s. 373.0361, F.S.

Section 2: Amends s. 163.3162, F.S.; providing for owner of land classified as an agricultural enclave to apply for an amendment to the comprehensive plan; providing requirements relating to applications; and, exempting certain amendments from specific rules of the Department of Community Affairs under certain circumstances.

Section 3: Amends s. 163.3164, F.S.; providing a definition for agricultural enclave.

Section 4: Creates s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 5: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 6: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 7: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 8: Amending s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

Section 9: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services (DACS), this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 8 of the bill addresses the development of a memorandum of agreement between DACS and each water management district in which DACS would conduct a review to determine exemptions from existing statute. DACS states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

As currently drafted, section 163.3162(5)(c), F.S., dealing with the preemption for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area, is ambiguous as to legislative intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to agricultural economic development; amending s. 70.001, F.S.; providing a deadline for an owner of agricultural land to present a claim prior to filing an action against a governmental entity regarding private property rights; amending s. 163.3162, F.S.; providing for application for an amendment to the local government comprehensive plan by the owner of land that meets certain provisions of the definition of an agricultural enclave; providing requirements relating to such applications; exempting certain amendments from specified rules of the Department of Community Affairs under certain circumstances; amending s. 163.3164, F.S.; defining the term "agricultural enclave" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act; creating s. 259.047, F.S.; providing requirements relating to the purchase of land on which an agricultural lease exists; amending s. 373.0361, F.S.; providing for recognition that alternative water supply development options for agricultural self-suppliers are limited; amending s. 373.2234, F.S.; conforming a cross-reference; amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits; creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (4), paragraph (a) of subsection (5), and paragraph (c) of subsection (6) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.--

(4)(a) Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(c) During the 90-day-notice period or the 180-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.

11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

(5)(a) During the 90-day-notice period or the 180-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ripeness decision identifying the allowable uses to which the

subject property may be put. The failure of the governmental entity to issue a written ripeness decision during the applicable 90-day-notice period or 180-day-notice period shall be deemed to ripen the prior action of the governmental entity, and shall operate as a ripeness decision that has been rejected by the property owner. The ripeness decision, as a matter of law, constitutes the last prerequisite to judicial review, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(6)

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the settlement offer, including the ripeness decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit

court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the ripeness decision, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ripeness decision, except for the final written settlement offer or the final written ripeness decision, and any negotiations or rejections in regard to the formulation either of the settlement offer or the ripeness decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

Section 2. Subsection (5) is added to section 163.3162, Florida Statutes, to read:

163.3162 Agricultural Lands and Practices Act.--

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--

(a) The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33)(e)1. may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is not subject to rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and

intensities of use of the industrial, commercial, or residential areas that surround the parcel. The local government shall make a determination regarding transmittal of such amendment within 120 days after receipt of a complete application for the amendment and transmit the amendment to the state land planning agency for review pursuant to s. 163.3184 at the first available transmittal cycle. The state land planning agency may not use any provision of rule 9J-5.006(5), Florida Administrative Code, as a factor in determining compliance of an amendment under this paragraph.

(b) In order to preserve commercial agricultural activity, encourage mixed-use infill development, prevent urban sprawl, and provide more efficient delivery of municipal services and facilities, the owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33)(e)2. may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is not subject to rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.

1. The local government and the owner of a parcel of land that is the subject of an application for an amendment under this paragraph shall have 180 days following the date that the local government receives a complete application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that

surround the parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Compliance with the schedule in the written agreement constitutes good faith negotiations for purposes of subparagraph 3.

2. Upon conclusion of good faith negotiations under subparagraph 1., regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of a complete application, the amendment must be immediately transferred to the state land planning agency for such review at the first available transmittal cycle. The state land planning agency may not use any provision of rule 9J-5.006(5), Florida Administrative Code, as a factor in determining compliance of an amendment under this paragraph.

3. If the owner fails to negotiate in good faith, rule 9J-5.006(5), Florida Administrative Code, shall apply throughout the negotiation and amendment process under this paragraph.

(c) Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection

currently existing for any property located within the boundaries of the following areas:

1. The Wekiva Study Area, as described in s. 369.316; or

2. The Everglades Protection Area, as defined in s. 373.4592(2).

Section 3. Subsection (33) is added to section 163.3164, Florida Statutes, to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(33) "Agricultural enclave" means an unincorporated, undeveloped parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;

(c) Is surrounded on at least 75 percent of its perimeter by:

1. Property that has existing industrial, commercial, or residential development; or

2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or

such public services are scheduled to be provided as part of a financially feasible 5-year schedule of capital improvements that is adopted by the local government or by an alternative provider of local government infrastructure; and

(e) Satisfies one of the following acreage criteria:

1. The parcel may not exceed 640 acres; or

2. The parcel may not exceed 2,560 acres.

Section 4. Section 259.047, Florida Statutes, is created to read:

259.047 Acquisition of land on which an agricultural lease exists.--

(1) When land with an existing agricultural lease is acquired in fee simple pursuant to this chapter or chapter 375, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under s. 253.034.

(2) Where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Section 5. Paragraph (a) of subsection (2) of section 373.0361, Florida Statutes, is amended to read:

373.0361 Regional water supply planning.--

(2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply

projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan shall exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following shall be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.1961(3).

d. Identification of the entity that should implement each project option and the current status of project implementation.

Section 6. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.--The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by the applicant, for at least a 20-year period and may be subject to the compliance reporting provisions of s. 373.236(4) ~~(3)~~. Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(2) and (3), or be construed to provide

that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 7. Present subsections (2) and (3) of section 373.236, Florida Statutes, are renumbered as subsections (3) and (4), respectively, present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (2) is added to that section, to read:

373.236 Duration of permits; compliance reports.--

(2) The Legislature finds that some agricultural landowners remain unaware of their ability to request a 20-year consumptive use permit under subsection (1) for initial permits or for renewals. Therefore, the water management districts shall inform agricultural applicants of this option in the application form.

(5) ~~(4)~~ Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years. However, if the permittee issues bonds for the construction of the project, upon request of the permittee prior to the expiration of the permit, that permit shall be extended for such

additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, provided that the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4) ~~(3)~~.

Section 8. Section 373.407, Florida Statutes, is created to read:

373.407 Memorandum of agreement for an agricultural-related exemption.--No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agricultural and Consumer Services shall assist in a determination by a water management district as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the request of a water management district, the Department of Agriculture and Consumer Services shall conduct a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). The memorandum of agreement shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake this review effectively and efficiently and issue a recommendation.

Section 9. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1015**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee hearing bill: **Agriculture**

Representative **Pickens** offered the following:

Amendment

Remove lines 134-198 and insert:

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.—The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33) may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is not subject to rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.

(a) The local government and the owner of a parcel of land that is the subject of an application for an amendment under this paragraph shall have 180 days following the date that the local government receives an application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the

parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Compliance with the schedule in the written agreement constitutes good-faith negotiations for purposes of subparagraph (c).

(b) Upon conclusion of good-faith negotiations under subparagraph (a), regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of an application, the amendment must be immediately transferred to the state land planning agency for such review at the first available transmittal cycle. The state land planning agency may not use any provision of rule 9J-5.006(5), Florida Administrative Code, as a factor in determining compliance of an amendment under this paragraph.

(c) If the owner fails to negotiate in good faith, rule 9J-5.006(5), Florida Administrative Code, shall apply throughout the negotiation and amendment process under this paragraph.

(d) Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the following areas:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.2

Bill No. **HB 1015**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: **Agriculture**

Representative **Pickens** offered the following:

Amendment

Remove line(s) 222-231 and insert:

residential development; or

3. Property that has been determined to be urban or suburban by the state land planning agency;

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local government or by an alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180; and

(e) Does not exceed 5,000 contiguous acres.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 Pawnbroking
SPONSOR(S): Kyle
TIED BILLS: **IDEN./SIM. BILLS:** SB 1870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Reese	Reese
2) Finance & Tax Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill amends the Florida Pawnbroking Act (act) to prohibit local governments, counties or municipalities, from enacting ordinances requiring the payment of any fee related to a pawn transaction unless authorized by the act.

The bill will have a fiscal impact on those counties and municipalities that have ordinances requiring pawn transaction fees. There appears to be no impact to state government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and ensure lower taxes – The bill prohibits local government ordinances requiring assessment of pawn transaction fees.

B. EFFECT OF PROPOSED CHANGES:

Background

Adopted in 1996, The Florida Pawnbroking Act[1] (act) provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services (department). Eligibility requirements and procedures for issuing, suspending, revoking and surrendering a license are provided, as well as prohibitions against certain acts. Also included are provisions for criminal penalties and injunctive remedies. The act creates a right to redeem pledged goods, a pawnbroker's lien, and a procedure for obtaining pledged goods allegedly misappropriated.

The act establishes strict licensing requirements, provides for detailed forms to be completed for each pawn transaction, requires strict record keeping and reporting procedures, and establishes procedures for the holding and recovering of stolen goods. As part of the record keeping process, pawnbrokers are required to deliver to the appropriate law enforcement official, on a daily basis, the original pawnbroker transaction forms for each transaction which occurred on the previous day.[2] Failure to comply can cost a pawnbroker his/her license.[3]

Over the past several years, the cities of Miami and Fort Lauderdale have enacted local ordinances assessing a pawn transaction fee of $1.50 on every pawn loan and purchase in those municipalities. According the City of Fort Lauderdale Police Department, the fee brings in approximately $80,000 annually. The funds are used to pay for pawn investigations by the police.

The City of Miami enacted its ordinance no. 11425 in 1996, setting forth administrative fees to cover the cost of review and processing of all transaction forms submitted by the "pawn shop detail." As noted in a Florida Third District Court of Appeals' opinion,[4] there are approximately 300 pawnshops in the city, averaging 600 transaction forms a day. On-site inspections are conducted monthly by the Pawn Shop Police Detail.

Following adoption of the ordinance, some pawn shops in Miami sued the city, and the trial court declared the city's pawnshop fees unconstitutional, finding them to be a tax, and not, as contended by the city, user fees.[5] The trial court believed that the city's pawnshop fees are a tax (and thus unconstitutional) for two reasons.[6] First the court concluded that the fees primarily benefit the general public as they are expended on city police services, including the criminal investigations made possible by the transaction reports. Next the court concluded that the city's pawnshop fees are involuntary in nature.

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[1] Chapter 539, Florida Statutes
[2] s. 539.001(9), F.S.
[3] s. 530.001(6), F.S.
[4] City of Miami, appellant, vs. Quick Cash Jewelry & Pawn, Inc., et al., appellees (Fla. 3d DCA 2002)
[5] *Id.*
[6] *Id.*

On appeal, the trial court's decision was overturned by the Florida Third District Court of Appeals, which stated in its decision: "As the City's pawnshop fees are voluntary and benefit pawnshop owners in a manner not shared by others, they are not a tax, but are constitutional user fees."[7]

A pawn transaction fee ordinance was recently proposed for pawn transactions in the city of Ocala. The city, however, did not enact the ordinance.

Effect of Bill

The bill addresses the conflicting ordinances subsection of the law to prohibit counties and municipalities from enacting local ordinances requiring the payment of any fee related to a pawn transaction unless authorized by state law.

C. SECTION DIRECTORY:

Section 1. Amends s. 539.001, F.S., to provide that local ordinances may not require the payment of any fee related to a pawn transaction unless authorized by state law.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Proponents of the bill state that costs incurred resulting from the regulatory requirements set forth in chapter 539, F.S., have been absorbed by the pawnbroking industry. The majority of pawn business owners have computerized their transaction systems in order to report electronically, rather than through use of paper forms, to law enforcement. The additional fee of $1.50 per transaction adds an additional cost to the business owners.

D. FISCAL COMMENTS:

The City of Fort Lauderdale receives approximately $80,000 annually from pawn transaction fees. The funds help pay for two police personnel who conduct pawn investigations.

With approximately 300 pawnshops in the city (in 2002)[8], averaging 600 transaction forms a day, the City of Miami can receive approximately $328,000 annually in pawn transaction fees.

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[7] *Id.*
[8] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds; however, the bill does reduce the authority that counties or municipalities have to raise revenues. The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   See Effect of Proposed Changes – Background

B. RULE-MAKING AUTHORITY:

The bill contains no grant of rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to pawnbroking; amending s. 539.001, F.S.; providing that local ordinances may not require the payment of any fee related to a pawn transaction unless authorized under the Florida Pawnbroking Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (20) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.--

(20) CONFLICTING ORDINANCES.--Any county or municipality may enact ordinances that are in compliance with, but not more restrictive than this section, except that local ordinances may not require the payment of any fee related to a pawn transaction unless authorized in this chapter or restrict hours of operations other than between midnight and 6 a.m. Any ordinance that conflicts with this subsection is void. ~~Nothing in~~ This section does not ~~shall~~ affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1031**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee hearing bill: **Agriculture**

Representative **Kyle** offered the following:

Amendment (with title amendment)

Remove lines 15-16 and insert:

restrictive than this section, except that local ordinances ~~may~~ shall not require the payment of any fee or tax related to a pawn transaction or purchase

========== T I T L E A M E N D M E N T ==========

Remove lines 3-4 and insert:

providing that local ordinances shall not require the payment of any fee or tax related to a pawn transaction or purchase unless

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1475 Agricultural Disaster Assistance
SPONSOR(S): Grimsley
TIED BILLS: **IDEN./SIM. BILLS:** SB 2712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Kaiser	Reese
2) Agriculture & Environment Appropriations Committee			
3) Fiscal Council			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

In 2000, the Legislature enacted the Agricultural Economic Development Program. This program is designed to provide loans to farmers who have experienced crop losses due to natural disasters or socio-economic events or conditions. The loans may be used to:

- Restore or replace essential physical property, such as animals, fences, equipment, structural production facilities or orchard trees;
- Pay all or part of production costs associated with the disaster year; or
- Pay essential family living expenses and restructure farm debts.

Funds may be issued as direct loans or as loan guarantees for up 90 percent of the total loan, in amounts not less than $30,000 or more than $250,000. Applicants must provide at least ten percent equity.

The bill expands the types of losses that allow agricultural producers to qualify for loan funds. It also permits loan funds to be used for the removal of debris in addition to restoring and replacing essential physical property. Definitions are provided for "losses" and "essential physical property" as used in the bill. The bill also raises the cap on loan funds from $250,000 to $300,000.

The bill appropriates $50 million from the General Revenue Fund to the General Inspection Trust Fund within the Department of Agriculture and Consumer Services for fiscal year 2006-07 to be used for providing loans to agricultural producers who experienced losses during the 2005 calendar year.

The bill does not appear to have a fiscal impact on local government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Promote personal responsibility: The bill amends the uses of disaster loan funds providing more flexibility for agricultural producers.

B. EFFECT OF PROPOSED CHANGES:

In 2000, the Legislature enacted the Agricultural Economic Development Program. This program is designed to provide loans to farmers who have experienced crop losses due to natural disasters or socio-economic events or conditions. The loans may be used to:

- Restore or replace essential physical property, such as animals, fences, equipment, structural production facilities or orchard trees;
- Pay all or part of production costs associated with the disaster year; or
- Pay essential family living expenses and restructure farm debts.

Funds may be issued as direct loans or as loan guarantees for up 90 percent of the total loan, in amounts not less than $30,000 or more than $250,000. Applicants must provide at least ten percent equity.

The federal government has three agricultural loan programs available to Florida farmers:

- United States Department of Agriculture's Farm Service Agency;
- Farm Credit System; and,
- Rural Business-Cooperative Service.

These loan programs are not designed to quickly assist seasonal producers who have been affected by a natural or socio-economic disaster. Additionally, some producers do not qualify for a federal loan due to income restrictions.

The bill expands the types of losses that allow agricultural producers to qualify for loan funds. "Losses" as used in this subsection[1] means crop loss or damage to an agricultural facility or infrastructure or farmworker housing owned by an agricultural producer. The bill also permits loan funds to be used for the removal of debris in addition to restoring and replacing essential physical property. "Essential physical property" means animals, fences, equipment, structural production facilities, other agricultural facility or infrastructure or farmworker housing owned by an agricultural producer, and orchard trees. The bill raises the cap on loan funds from $250,000 to $300,000.

The bill appropriates $50 million from the General Revenue Fund to the General Inspection Trust Fund within the Department of Agriculture and Consumer Services for fiscal year 2006-07 to be used for providing loans to agricultural producers who experienced losses during the 2005 calendar year.

C. SECTION DIRECTORY:

Section 1: Amends s. 570.249, F.S.; revising criteria for use of loan funds; increasing the maximum amount of a loan; and, providing definitions.

Section 2: Provides an appropriation.

Section 3: Provides an effective date of July 1, 2006.

[1] Section 570.249(1)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers would benefit from obtaining loans they may otherwise be unable to obtain from other sources.

D. FISCAL COMMENTS:

The bill appropriates $50 million from the General Revenue Fund to the General Inspection Trust Fund within the Department of Agriculture and Consumer Services for fiscal year 2006-07 to be used for providing loans to agricultural producers who experienced losses during the 2005 calendar year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to agricultural disaster assistance; amending s. 570.249, F.S.; expanding the conditions under which loan funds to certain agricultural producers may be granted; increasing the maximum amount of a loan; providing definitions; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 570.249, Florida Statutes, is amended to read:

570.249 Agricultural Economic Development Program disaster loans and grants and aid.--

(1) USE OF LOAN FUNDS.--

(a) Loan funds to agricultural producers who have experienced ~~crop~~ losses from a natural disaster or a socioeconomic condition or event may be used to:

1. Restore, ~~or~~ replace, or remove debris from essential physical property~~, such as animals, fences, equipment, structural production facilities, and orchard trees;~~.

2. Pay all or part of production costs associated with the disaster year.~~,~~

3. Pay essential family living expenses.~~; and~~

4. Restructure farm debts.

(b) Funds may be issued as direct loans, or as loan guarantees for up to 90 percent of the total loan, in amounts

not less than $30,000 nor more than $300,000 ~~$250,000~~. Applicants must provide at least 10 percent equity.

(c) For purposes of this subsection, the term:

1. "Losses" means crop loss or damage to an agricultural facility or infrastructure or farmworker housing owned by an agricultural producer.

2. "Essential physical property" means animals, fences, equipment, structural production facilities, other agricultural facility or infrastructure or farmworker housing owned by an agricultural producer, and orchard trees.

Section 2. The sum of $50 million is appropriated from the General Revenue Fund to the General Inspection Trust Fund within the Department of Agriculture and Consumer Services for fiscal year 2006-2007 for the purpose of providing loan funds under s. 570.249, Florida Statutes, to agricultural producers who experienced losses during the 2005 calendar year.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB AG 06-02 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee		Kaiser	Reese
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

PCB AG 06-02 addresses a variety of issues relating to the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Revises education requirements for a private security license requiring Class "D" licensees to complete training within 180 days of applying for the license;
- Defines "caller identification service" and requires telephone solicitors to transmit certain identifying information to be displayed by a caller identification service;
- Preempts the regulation of refunds by retail sales establishments to the department;
- Clarifies provisions prohibiting local governments from imposing monetary penalties on owners of shopping carts under certain conditions;
- Defines the term "alternative fuel" and includes alternative fuel in the definition of petroleum fuel for purposes of inspection of petroleum fuel quality;
- Exempts persons delivering specified amounts of liquefied petroleum gas to consumers from having to meet minimum storage requirements;
- Eliminates a requirement for an agency receiving a consumer complaint from the department to file progress reports with the department; and
- Creates an exemption from insurance requirements for a governmental entity that is operating an amusement ride.

The bill has no fiscal impact on state or local government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires telephone solicitors to transmit the phone number and name of the company they represent to the caller identification service of the recipient of the telephone solicitation. The bill also provides for the preemption of the regulation of refunds by retail sales establishments to the Department of Agriculture and Consumer Services (department). The bill grants the department authority to inspect facilities selling alternative fuels. The bill deletes a requirement for other agencies to report back to the department regarding the disposition of complaints.

Maintain public security: The bill requires private security officers to complete the total 40 hours of professional training.

B. EFFECT OF PROPOSED CHANGES:

Division of Licensing

When the Cabinet was reorganized in 2003, the Division of Licensing (division) was transferred from the Department of State to the Department of Agriculture and Consumer Services (department). There are still some statutes that reference the division operating within the Department of State. This legislation corrects those references to reflect the transfer of the division to the department.

Security Officers (Class "D") Licensure

Currently, an applicant for a Class "D" license is required to complete a minimum of 40 hours of professional training at a school or training facility licensed by the department.[1] By rule, the department establishes the general content of the training. An applicant may satisfy the training requirement either by successfully completing all 40 hours of training before the initial license application or by successfully completing 24 hours of training before the initial license application and completing the remaining 16 hours of training upon the first application for renewal of the license.[2] This exemption enables a person, licensed prior to October 1, 1994, to allow his/her license to expire, then re-apply using the same 24-hours of training, thus avoiding ever completing the remaining 16 hours of training.

The bill requires the initial 24 hours of training to be taken for licensure, with the remaining 16 hours of training to be completed within 180 days of submission of the initial application. The bill provides for an individual's license to be suspended in the event documentation of the training is not submitted within the specified timeframe.

Telephone Solicitation

The Division of Consumer Services (division), within the department, regulates telephone solicitation. Current law requires telephone solicitors, making unsolicited telephonic sales calls to a residential, mobile, or telephonic paging device telephone number, to identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact with the person who is the subject of the solicitation telephone call.[3] The law makes no mention regarding information transmitted by the solicitation call to the caller identification service.

The bill requires persons making telephonic sales call to transmit the telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. The bill provides that the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a

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[1] Section 493.6303(4)(a), F.S.

[2] Individual licensed before October 1, 1994, do not have to complete additional training hours in order to renew their licenses. (s. 493.6303(4)(b), F.S.)

[3] Section 501.059(2), F.S.

telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours, may be substituted.

"Caller identification service" is defined as a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

Retail Sales Establishments
Existing law provides that every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure to exhibit a "no refund" sign under such circumstances at the point of sale means that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided that the merchandise is unused and in the original carton, if one was furnished.[4]

The bill expressly preempts the regulation of refunds in retail sales establishments to the department and authorizes the department to adopt rules to enforce the provisions s. 501.142, F.S. The bill also authorizes a local government to impose penalties. The bill provides means to the department for addressing violations. Monies recovered by the department may be deposited into the General Inspection Trust Fund. Monies recovered by a local government may be deposited into the appropriate local account.

Shopping Carts
Current law provides that no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the department.[5]

The bill specifies that no fee, fine, or costs may be assessed against the owner of a shopping cart unless the cart is found on public property **and** it was removed from the premises or parking area of a retail establishment by the cart's owner or an employee acting on the owner's behalf.

Alternative Fuel
Chapter 525, F.S., addresses gasoline and oil inspection but does not specifically include alternative fuels, such as alcohol-blended and biodiesel fuels. In light of the recent interest and advancements in the use of alternative fuels and their increasing presence in the marketplace, the department sees a need to define and establish quality standards for such fuels.

The bill provides a definition for alternative fuel. In doing so, the department is granted the authority to inspect facilities selling alternative fuels to the general public. The department is also authorized to adopt relevant fuel quality standards for alternative fuels into department rule.

Liquefied Petroleum Gas
Section 527.11, F.S., provides for minimum storage requirements relating to liquefied petroleum gas (LPG). The intent of minimum storage requirements is to ensure there is an adequate supply of product during peak periods such as winter months or hurricane season, when there is the potential for product shortage. Current law[6] provides an exemption from minimum storage requirements for companies operating cylinder exchange units or a single dispenser serving liquid product directly to the public. These companies are not providing product for essential services, such as home heating, but rather providing product for non-essential services, such as grills, mosquito control, etc. The current

[4] Section 501.142(1), F.S.
[5] Section 506.5131(2), F.S.
[6] Section 527.11(3), F.S.

language prohibits these companies from delivering small cylinders of LPG to their customers or from conducting the periodic testing required by law to ensure cylinder suitability for continued safe use, without first obtaining either a storage container of 18,000 gallons or acquiring multiple licenses.

The bill allows a licensee who has a single dispensing unit to deliver small cylinders of LPG to residential customers without the requirement of building or leasing 18,000 gallons worth of storage.

Consumer Complaint Reports
Current law[7] requires the Division of Consumer Services to forward consumer complaints, which fall under the jurisdiction of another agency, to that agency. The receiving agency has 30 days to acknowledge receipt of the complaint and report on the disposition of the complaint. If the 30 day deadline is not met, the agency must file additional reports with the department concerning the status of the complaint.

The bill deletes the requirement for other agencies to report back to the department regarding the disposition of the complaint. Additionally, the bill removes a cross-reference to the report from statute.

Fair Rides
Current statute requires amusement ride operators to have in effect, at all times, an insurance policy or surety bond in the amount of $1 million per occurrence and $1 million in the aggregate procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer. This requirement is not appropriate for governmental entities who have limited liability pursuant to s. 768.28(16), F.S.

The bill creates an exemption for amusement rides operated by governmental entities that are covered under the limited liability statutes.

Other
The bill corrects a cross-reference that was inadvertently omitted, which clarifies that liquid petroleum inspections fall under the Division of Standards within the department.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6106, F.S.; corrects reference to state agency.

Section 2: Amends s. 493.6121, F.S.; corrects reference to state agency.

Section 3: Amends s. 493.6303, F.S.; directs the Department of Agriculture and Consumer Services (department) to establish training hours required for Class "D" private security licensure; provides timeframe for completing training; provides for suspension of license in certain circumstances; and, provides exemption from training requirements.

Section 4: Amends s. 501.059, F.S.; prohibits telephone solicitor from blocking certain information from a recipient's caller identification service; provides an exception; and provides a definition.

Section 5: Amends s. 501.142, F.S.; preempts the regulation of refunds to the department; allows for the adoption of rules for enforcement; provides for enforcement by local government; provides penalties for violations; provides for moneys recovered to be deposited into designated trust fund; authorizes a local government to impose penalties; and, provides for moneys recovered by local governments to be deposited into designated accounts.

Section 6: Amends s. 506.5131, F.S.; revises provisions relating to shopping carts.

Section 7: Amends s. 525.01, F.S.; provides a definition for alternative fuel.

[7] Section 570.544, F.S.

Section 8: Amends s. 527.11, F.S.; exempts the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions relating to the delivery of liquefied petroleum gas; and, requires a person delivering liquefied petroleum gas in bulk to comply with certain storage requirements.

Section 9: Amends s. 570.46, F.S.; revises the duties of the Division of Standards.

Section 10: Amends s. 570.47, F.S.; revises a cross reference.

Section 11: Amends s. 570.544, F.S.; deletes provisions requiring agencies receiving a complaint to file a progress report with the Division of Consumer Services.

Section 12: Repeals s. 526.3135, F.S.; relating to reports filed with the Division of Consumer Services.

Section 13: Amends s. 616.242, F.S.; exempts certain governmental entities from insurance requirements.

Section 14: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   Division of Standards: The department states that there is no fiscal impact currently associated with the alternative fuels. However, as these fuels capture a significant market share in future years, there will be additional costs to the department associated with regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the department, the exemption of bulk storage in order to deliver 40 pounds or less of propane capacity will have a positive impact on certain LP gas licensees. This exemption results in considerable, indeterminate cost savings for the licensee, many of whom are small business operators.

The department reports that exempting governmental entities from insurance requirements for amusement rides will have a positive affect on counties and municipalities that operate amusement rides (i.e. water slides, carousels, trains). Insurance requirements imposed currently by s. 616.242(9), F.S., will not apply if the municipalities are covered by the provisions of s. 768.28(16), F.S., of the state's self insurance program.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority to enforce provisions relating to regulation of refunds from retail sales establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

NA

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6106, F.S.; clarifying that private investigative, private security, and repossession services are licensed by the department; amending s. 493.6121, F.S.; authorizing the department to institute judicial proceedings to enforce ch. 493, F.S., or any rule or order of the department; amending s. 493.6303, F.S.; revising the requirements for a Class "D" private security license; requiring the department to establish the number of hours of each subject area to be taught in training; providing for automatic suspension of a license upon failure to submit documentation of completing the required training; providing exemptions; amending s. 501.059, F.S.; prohibiting a telephone solicitor from blocking certain information from a recipient's caller identification service; providing an exception; authorizing a telephone solicitor to substitute certain information provided to the recipient's caller identification service; providing a definition; amending s. 501.142, F.S.; providing that the regulation of refunds in retail sales establishments is preempted to the department; authorizing the department to adopt rules; authorizing the department to enter orders for certain violations; requiring that any moneys recovered by the department as a penalty be deposited in the General Inspection Trust Fund; authorizing a local government to impose penalties; requiring that any moneys recovered by a local government as a penalty be deposited in the

appropriate local account; amending s. 506.5131, F.S.; revising provisions relating to assessment of fees, fines, and costs against the owner of a shopping cart; amending s. 525.01, F.S.; defining the term "alternative fuel" for purposes of ch. 525, F.S., relating to the inspection of gasoline and oil; amending s. 527.11, F.S.; exempting the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions governing the delivery of liquefied petroleum gas; requiring that a person delivering liquefied petroleum gas in bulk comply with certain storage requirements; amending ss. 570.46 and 570.47, F.S.; authorizing the Division of Standards within the department to enforce ch. 527, F.S., relating to the sale of liquefied petroleum gas; amending s. 570.544, F.S.; deleting provisions requiring that an office or agency receiving a complaint file progress reports with the Division of Consumer Services within the department; repealing s. 526.3135, F.S., relating to reports by the Division of Standards, to conform to changes made by the act; amending s. 616.242, F.S.; exempting certain governmental entities from requirements that operators of amusement rides maintain specified amounts of insurance coverage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.--

(2) Each agency shall have a minimum of one physical location within this state from which the normal business of the agency is conducted, and this location shall be considered the primary office for that agency in this state.

(c) Each Class "A," Class "B," Class "R," branch office, or school licensee shall display, in a place that is in clear and unobstructed public view, a notice on a form prescribed by the department stating that the business operating at this location is licensed and regulated by the Department of Agriculture and Consumer Services ~~State~~ and that any questions or complaints should be directed to the department.

Section 2. Subsections (5) and (7) of section 493.6121, Florida Statutes, are amended to read:

493.6121 Enforcement; investigation.--

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of Agriculture and Consumer Services ~~State~~ may obtain access to the information in criminal justice information systems and to criminal justice information as defined in s. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and protect the confidentiality of the information. Such criminal justice information submitted to the division is confidential and exempt from the provisions of s. 119.07(1).

(7) The department may institute ~~of Legal Affairs shall represent the Department of Agriculture and Consumer Services in~~ judicial proceedings in the appropriate circuit court seeking enforcement of this chapter~~,~~ or any rule or order of the department ~~upon an action by any party seeking redress against~~

~~the department, and shall coordinate with the department in the conduct of any investigations incident to its legal responsibility~~.

Section 3. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.--In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(4)(a) Effective January 1, 2007 ~~October 1, 1994~~, an applicant for a Class "D" license must complete ~~have completed~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught ~~the training~~.

(b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:

1. Successful completion of the total number of required ~~40~~ hours of training before initial application for a Class "D" license; or

2. Successful completion of 24 hours of training before initial application ~~for,~~ and the remaining 16 hours of training within 180 days after the date that ~~upon~~ the ~~first~~ application is submitted ~~for renewal of, a Class "D" license~~. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department. ~~However,~~ Individuals licensed before October 1, 1994, or individuals who have

successfully completed 40 hours of professional training before January 1, 2007, at a school or training facility that is licensed by the department are exempt from the training requirement of paragraph (a) ~~need not complete additional training hours in order to renew their licenses~~.

However, any person whose license has been revoked, suspended pursuant to subparagraph 2., or ~~whose license has been~~ expired for 1 year or longer is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department before a license will be issued.

Section 4. Paragraph (c) is added to subsection (7) of section 501.059, Florida Statutes, to read:

501.059 Telephone solicitation.--

(7)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause to be transmitted the telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. For purposes of this section, the term "caller identification

service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

Section 5. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; notice of refund policy; exceptions; penalty.--

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary. Every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure of a retail sales establishment to exhibit a "no refund" sign under such circumstances at the point of sale shall mean that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided the merchandise is unused and in the original carton, if one was furnished. Nothing herein shall prohibit a retail sales establishment from having a refund policy which exceeds the number of days specified herein. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this section. However, this subsection does not prohibit a local government from enforcing the provisions

established by this section or department rule.

(2) The provisions of this section shall not apply to the sale of food, perishable goods, goods which are custom made, goods which are custom altered at the request of the customer, or goods which cannot be resold by the merchant because of any law, rule, or regulation adopted by a governmental body.

(3) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this section or the rules or orders issued under this section:

(a) Issue a notice of noncompliance pursuant to s. 120.695.

(b) Impose an administrative fine not to exceed $100 for each violation.

(c) Direct the person to cease and desist specified activities.

(4) The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in subsection (3) are governed by chapter 120.

(5) Any moneys recovered by the Department of Agriculture and Consumer Services as a penalty under this section shall be deposited in the General Inspection Trust Fund.

(6) Upon the first violation of this section, a local government may issue a written warning. Upon a second and any subsequent violation, a local government may impose a fine of up to $50 per violation. Any moneys recovered by the local government as a penalty under this section shall be deposited in the appropriate local account.

Section 6. Section 506.5131, Florida Statutes, is amended to read:

506.5131 Return of shopping carts; assessment of fees, fines, and costs.--

(1) The rightful owner of any shopping cart with a registered name or mark found on public property shall be immediately notified of its recovery.

(2) Notwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart unless the shopping cart was found on public property and~~, unless the shopping cart~~ was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and the ~~such~~ fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services.

Section 7. Subsection (1) of section 525.01, Florida Statutes, is amended to read:

525.01 Gasoline and oil to be inspected.--

(1) For the purpose of this chapter:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Petroleum fuel" means all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, ~~or~~ other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.

(c) "Alternative fuel" means:

1. Methanol, denatured ethanol, or other alcohols;

2. Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, or other alcohols with gasoline or

other fuels, or such other percentage, but not less than 70 percent, as determined by the department by rule, to provide for requirements relating to cold start, safety, or vehicle functions;

3. Hydrogen;

4. Coal-derived liquid fuels; and

5. Fuels, other than alcohol, derived from biological materials.

Section 8. Section 527.11, Florida Statutes, is amended to read:

527.11 Minimum storage.--

(1) Every person who engages in the distribution of liquefied petroleum gas for resale to domestic, commercial, or industrial consumers as a prerequisite to obtaining a liquefied petroleum gas license shall install, own, or lease a bulk storage filling plant of not less than 18,000 gallons (water capacity) within the state and shall be located within a 75-mile radius of the licensed company's business location. This bulk storage filling plant must have loading and unloading provisions solely for the licenseholder and be operated and maintained in compliance with this chapter for the duration of the license.

(2) A dealer in liquefied petroleum gas licensed as of August 31, 2000, who has entered or who enters into a written agreement with a wholesaler that the wholesaler will provide liquefied petroleum gas to the dealer for a period of 12 continuous months is exempt from the requirements of subsection (1), if the wholesaler has at least 18,000 gallons (water capacity) of bulk storage within this state permanently connected for storage, which is used as such for each dealer to whom gas is

sold, and if the wholesaler has loading and unloading provisions. Such dealer must provide certification of this agreement on a form provided by the department to the department before her or his license may be issued. The form must be signed by both the wholesaler or his or her agent and the dealer or his or her agent and must be submitted annually with the license renewal application. A dealer who does not provide written proof of minimum storage may have her or his license denied, suspended, or revoked. A ~~No~~ wholesaler may not enter into written agreements that allocate an amount of storage that exceeds the wholesaler's total storage capacity minus 18,000 gallons (water capacity).

(3) A dealer in liquefied petroleum gas operating a single dispensing unit for the sole purpose of direct product sale to customers, including delivery of cylinders of 40 pounds or less of propane gas capacity for use with outdoor equipment or appliances that are not connected to or part of the permanent interior piping of a structure, ~~(no deliveries)~~ or an operator of a cylinder exchange unit is exempt from the requirements of this section. A person may not deliver liquefied petroleum gas by cargo vehicle unless the person complies with requirements for minimum storage.

Section 9. Subsection (5) is added to section 570.46, Florida Statutes, to read:

570.46 Division of Standards; powers and duties.--The duties of the Division of Standards include, but are not limited to:

(5) Enforcing the provisions of chapter 527.

Section 10. Subsection (2) of section 570.47, Florida Statutes, is amended to read:

570.47 Director; qualifications; duties.--

(2) The director shall supervise, direct, and coordinate the activities of the division and to that end shall, under the direction of the department, enforce the provisions of chapters 501, 525, 526, 527, 531, and 616.

Section 11. Subsections (6) through (9) of section 570.544, Florida Statutes, are amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.--

(6)~~(a)~~ The office or agency to which a complaint has been referred shall within 30 days acknowledge receipt of the complaint ~~and report on the disposition made of the complaint~~. ~~In the event a complaint has not been disposed of within 30 days, the receiving office or agency shall file progress reports with the Division of Consumer Services no less frequently than 30 days until final disposition.~~

~~(b) The report shall contain at least the following information:~~

~~1. A finding of whether the receiving agency has jurisdiction of the subject matter involved in the complaint.~~

~~2. Whether the complaint is deemed to be frivolous, sham, or without basis in fact or law.~~

~~3. What action has been taken and a report on whether the original complainant was satisfied with the final disposition.~~

~~4. Any recommendation regarding needed changes in law or procedure which in the opinion of the reporting agency or office will improve consumer protection in the area involved.~~

~~(7)(a) If the office or agency receiving a complaint fails to file a report as contemplated in this section, that failure~~

~~shall be construed as a denial by the receiving office or agency that it has jurisdiction of the subject matter contained in the complaint.~~

~~(b)~~ If an office or agency receiving a complaint determines that the matter presents a prima facie case for criminal prosecution or if the complaint cannot be settled at the administrative level, the complaint together with all supporting evidence shall be transmitted to the Department of Legal Affairs or other appropriate enforcement agency with a recommendation for civil or criminal action warranted by the evidence.

(7) ~~(8)~~ The records of the Division of Consumer Services are public records. However, customer lists, customer names, and trade secrets are confidential and exempt from the provisions of s. 119.07(1). Disclosure necessary to enforcement procedures shall not be construed as violative of this prohibition.

(8) ~~(9)~~ It shall be the duty of the Division of Consumer Services to maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

Section 12. Section 526.3135, Florida Statutes, is repealed.

Section 13. Subsection (9) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.--

(9) INSURANCE REQUIREMENTS.--

(a) An owner may not operate an amusement ride unless the owner has in effect at all times of operation insurance meeting the following requirements:

1. An insurance policy in an amount of not less than $1 million per occurrence, $1 million in the aggregate, which insures the owner of the amusement ride against liability for injury to persons arising out of the use of the amusement ride; or

2. A bond in a like amount; however, the aggregate liability of the surety under the bond may not exceed the face amount thereof.

(b) The policy or bond must be procured from an insurer or surety that is licensed to transact business in this state or that is approved as a surplus lines insurer.

(c) The insurance requirements imposed under this subsection do not apply to a governmental entity that is covered by the provisions of s. 768.28(16).

Section 14. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB AG 06-02**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee hearing bill: **Agriculture**

Representative **Poppell** offered the following:

Amendment (with title amendment)

Between lines 150-151, insert:

(d) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call, or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

========== T I T L E A M E N D M E N T ==========

Remove line 20 and insert:

identification service; providing a definition; prohibiting alteration of a caller's voice during a telephonic sales call under certain circumstances and for certain purposes; amending

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **PCB AG 06-02**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee hearing bill: **Agriculture**

Representative **Poppell** offered the following:

Amendment

Remove lines 136 and insert:

made to fail to transmit or cause not to be transmitted the telephone